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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGELA BUELL, individually, and on behalf
of all others similarly situated,

Plaintiff,

NO.

v.

CLASS ACTION COMPLAINT

CREDIT.COM, INC., a Delaware corporation,

JURY DEMAND

Defendant.

Plaintiff Angela Buell (“Plaintiff Buell” or “Buell”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Credit.com Inc. (“Defendant Credit.com” or “Credit.com”) to stop the Defendant from violating the Telephone Consumer Protection Act by making unsolicited pre-recorded telemarketing calls, including to consumers who registered their phone numbers on the National Do Not Call registry (“DNC”). Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendant’s conduct. Plaintiff Buell, for this Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

PARTIES

1. Plaintiff Angela Buell is a resident of Edon, Ohio.

2. Defendant Credit.com is a Delaware registered corporation headquartered in San Francisco, California. Defendant Credit.com conducts business throughout this District and throughout the U.S.

JURISDICTION AND VENUE

3. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

4. This Court has personal jurisdiction over the Defendant because the Defendant maintains its headquarters in this District and because the wrongful conduct giving rise to this case was directed from this District by Defendant.

INTRODUCTION

5. As the Supreme Court explained at the end of its term this year, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.” *Barr v. Am. Ass’n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at *5 (U.S. July 6, 2020).

6. The National Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See 47 C.F.R. § 64.1200(c)(2).*

7. A listing on the Registry “must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.”

8. When Congress enacted the TCPA in 1991, it found that telemarketers called more than 18 million Americans every day. 105 Stat. 2394 at § 2(3).

9. By 2003, due to more powerful autodialing technology, telemarketers were calling 104 million Americans every day. In re Rules and Regulations Implementing the TCPA of 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

10. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

11. Industry data shows that the number of robocalls made each month increased from 831 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

12. According to online robocall tracking service “YouMail,” 4 billion robocalls were placed in January 2021 alone, at a rate of 129.6 million per day. www.robocallindex.com.

13. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-center-data.

14. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC chairman.¹

15. “The FTC receives more complaints about unwanted calls than all other complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016).²

COMMON ALLEGATIONS

16. Credit.com provides credit counseling services to consumers.³

¹ <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

² https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf

³ <https://www.credit.com/>

1 17. Credit.com offers basic plans to consumers at no cost, with options to get
 2 additional services like “extracredit” for a cost of \$24.99 per month.⁴

3 18. As part of its business practice, Credit.com places solicitation calls to consumers
 4 in order to solicit them to purchase credit.com plans.

5 19. Defendant Credit.com places pre-recorded calls to consumers despite having
 6 never acquired the necessary consent needed to place such calls.

7 20. As explained by the Federal Communications Commission (“FCC”) in its 2012
 8 order, the TCPA requires “*prior express written consent* for all autodialed or prerecorded
 9 [solicitation] calls to wireless numbers and residential lines.” *In the Matter of Rules and*
 10 *Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278,
 11 FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

12 21. These calls are being placed without express written consent from consumers who
 13 are registered on the DNC and who do not have an existing business relationship with the
 14 Defendant.

15 22. For example, in Plaintiff Buell’s case, Defendant placed multiple pre-recorded
 16 calls to her cell phone number which is registered on the DNC.

17 23. Consumers have complained online about the incessant calls they receive from
 18 Defendant. For example:

- 19 • “They were looking for a person and said they were credit. Com to help with my
 20 credit issues”⁵
- 21 • “Unsolicited call”⁶
- 22 • “robo call”⁷
- 23 • “repeatedly calls”⁸

24

 25 ⁴ <https://www.credit.com/extracredit/adv>

26 ⁵ <https://www.shouldianswer.com/phone-number/8333332329>

27 ⁶ *Id.*

28 ⁷ *Id.*

29 ⁸ *Id.*

- “Credit.com some type of Auto Express agency”⁹
- “had a call from this number about 10 times now I HAVE IT BLOCKED”¹⁰
- “[Just] calls allday”¹¹
- “leaves *** second vm every time”¹²

24. Consumers have posted pre-recorded voicemails that they received from Defendant on YouMail.com that are identical to the voicemails Plaintiff received, from the same phone number Defendant used to call Plaintiff. For example:

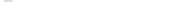
○ Spam

Hi this is Credit.com. You recently submitted a request for one of our partner sites. So we're calling to provide you with a free credit report consultation to help you with your credit needs. Please call us back at 844-243-7661 that's 844-243-7661. You can also opt out from receiving these offers by calling 800-233-7839.

 A YouMail subscriber
7/10/20, 10:22 AM

Spam

Hi this is Credit.com. You recently submitted a request for one of our partner sites. So we're calling to provide you with a free credit report consultation to help you with your credit needs. Please call us back at 844-243-7661 that's 844-243-7661. You can also opt out from receiving these offers by calling 800-233-7839.

A YouMail subscriber
214-123-4567

25. In response to these calls, Plaintiff Buell files this lawsuit seeking injunctive relief requiring the Defendant to cease from violating the Telephone Consumer Protection Act, as well as an award of statutory damages to the members of the Classes and costs.

⁹ <https://800notes.com/Phone.aspx/1-833-333-2329>

¹⁰ <https://www.reportedcalls.com/8333332329>

¹¹ <https://findwhocallsyou.com/8333332329?CallerInfo>

12 *Id.*

¹³ <https://directory.youmail.com/directory/phone/8333332329>

PLAINTIFF BUELL'S ALLEGATIONS

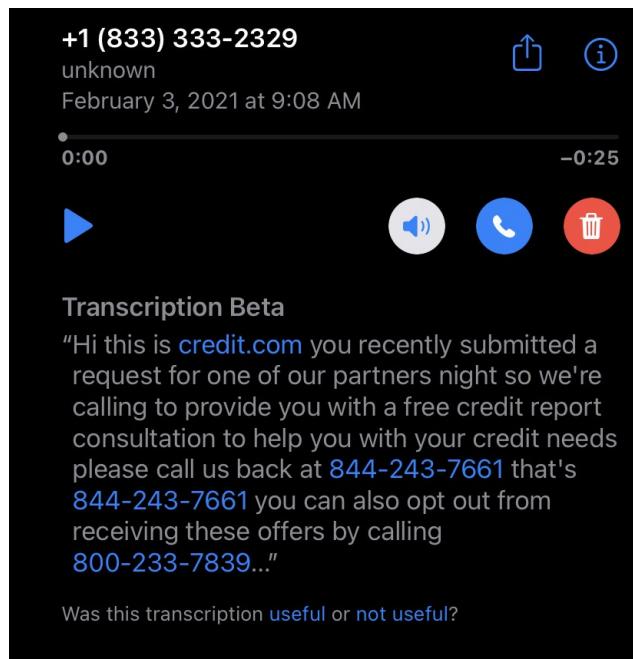
26. Plaintiff Buell registered her cell phone phone number on the DNC on April 16, 2013.

27. Plaintiff Buell's cell phone number is not associated with a business and is used for personal use only.

28. On February 3, 2021 at 9:08 AM, Plaintiff received a call from Defendant to her cell phone, from phone number 833-333-2329.

29. Plaintiff did not answer this call.

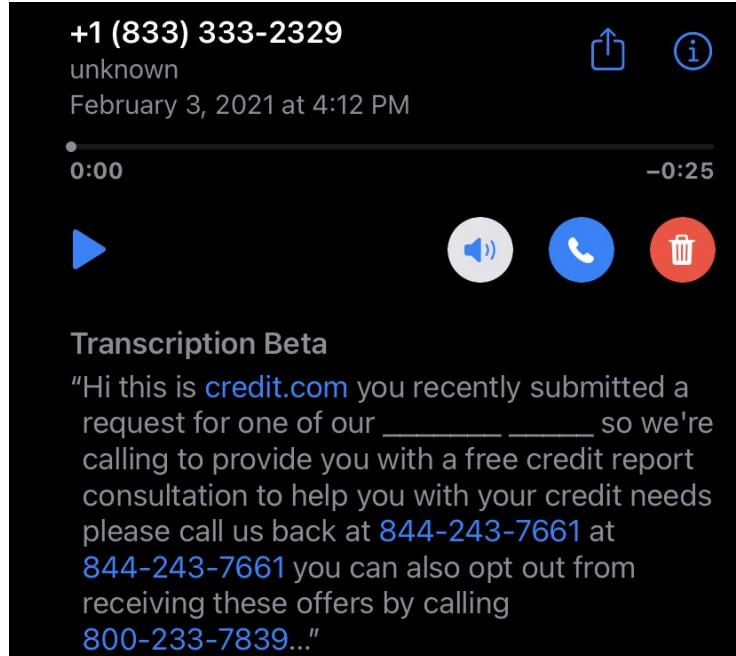
30. Defendant left a pre-recorded voicemail on Plaintiff's cell phone:



31. On February 3, 2021 at 4:12 PM, Plaintiff received a 2nd call from Defendant to her cell phone, from phone number 833-333-2329.

32. Plaintiff did not answer this call.

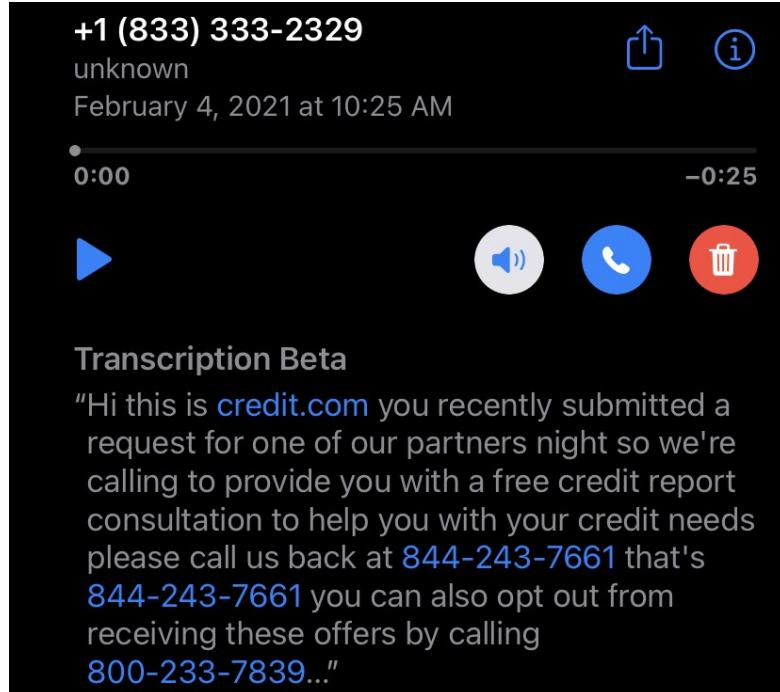
33. Defendant left a pre-recorded voicemail on Plaintiff's cell phone that is identical to the voicemail that was left on February 3, 2021 at 9:08 AM:



12 34. On February 4, 2021 at 10:25 AM, Plaintiff received a 3rd call from Defendant to
13 her cell phone, from phone number 833-333-2329.

14 35. Plaintiff did not answer this call.

15 36. Defendant left a pre-recorded voicemail on Plaintiff's cell phone that is identical
16 to the 2 voicemails Plaintiff received on February 3, 2021:



12 37. At no time did Plaintiff consent to receive pre-recorded or other telemarketing
13 calls.

14 38. Plaintiff was not looking to get any credit counseling support or any related
15 services, and did not submit a request for one of Credit.com's partners.

16 39. The unauthorized solicitation telephone calls that Plaintiff received from
17 Credit.com, as alleged herein, have harmed Plaintiff Buell in the form of annoyance, nuisance,
18 and invasion of privacy, and disturbed the use and enjoyment of her phone, in addition to the
19 wear and tear on the phone's hardware (including the phone's battery) and the consumption of
20 memory on the phone.

21 40. Seeking redress for these injuries, Plaintiff Buell, on behalf of herself and Classes
22 of similarly situated individuals, bring suit under the TCPA.

23 CLASS ALLEGATIONS

24 41. Plaintiff Buell brings this action pursuant to Federal Rules of Civil Procedure
25 23(b)(2) and 23(b)(3) and seek certification of the following Classes:

1 **Pre-recorded No Consent Class:** All persons in the United States who from four years
 2 prior to the filing of this action through trial (1) Defendant (or an agent acting on behalf
 3 of Defendant) called (2) using a pre-recorded voice message, and (3) for whom the
 4 Defendant claim (a) they obtained prior express written consent in the same manner as
 5 Defendant claims they supposedly obtained prior express written consent to call Plaintiff,
 6 or (b) they obtained the person's number in the same manner as Defendant obtained
 7 Plaintiff's number.

8 **Do Not Call Registry Class:** All persons in the United States who from four years prior
 9 to the filing of this action through trial (1) Defendant (or an agent acting on behalf of the
 10 Defendant) called more than one time, (2) within any 12-month period, (3) where the
 11 person's telephone number had been listed on the National Do Not Call Registry for at
 12 least thirty days, (4) for substantially the same reason Defendant called Plaintiff, and (5)
 13 for whom Defendant claims (a) they obtained prior express written consent in the same
 14 manner as Defendant claim they supposedly obtained prior express written consent to call
 15 Plaintiff, or (b) they obtained the person's number in the same manner as Defendant
 16 obtained Plaintiff's number.

17 42. The following individuals are excluded from the Classes: (1) any Judge or
 18 Magistrate presiding over this action and members of their families; (2) Defendant, their
 19 subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or its
 20 parents have a controlling interest and their current or former employees, officers and directors;
 21 (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion
 22 from the Classes; (5) the legal representatives, successors or assigns of any such excluded
 23 persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated
 24 and/or released. Plaintiff Buell anticipates the need to amend the Class definitions following
 25 appropriate discovery.

26 43. **Numerosity:** On information and belief, there are hundreds, if not thousands of
 27 members of the Classes such that joinder of all members is impracticable.

28 44. **Commonality and Predominance:** There are many questions of law and fact
 29 common to the claims of the Plaintiff and the Classes, and those questions predominate over any
 30 questions that may affect individual members of the Classes. Common questions for the Classes
 31 include, but are not necessarily limited to the following:

- (a) whether Defendant Credit.com placed pre-recorded voice message calls to Plaintiff Buell and members of the Pre-recorded Class without first obtaining consent to make the calls;
- (b) whether Defendant Credit.com systematically made multiple calls to Plaintiff and other consumers whose telephone numbers were registered with the DNC without first obtaining consent to make the calls;
- (c) whether Defendant Credit.com's calls to Plaintiff and other consumers were made for telemarketing purposes;
- (d) whether Defendant's conduct constitutes a violation of the TCPA; and
- (e) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct.

45. **Adequate Representation:** Plaintiff Buell will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff Buell has no interests antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff Buell and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff Buell nor her counsel have any interest adverse to the Classes.

46. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court’s imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendant’s business practices apply to and affect the members of the Classes uniformly, and Plaintiff’s challenge of those practices hinges on Defendant’s conduct with respect to the Classes as wholes, not on facts or law applicable only to Plaintiff Buell. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation

1 necessitated by Defendant’s actions. Thus, it would be virtually impossible for the members of
2 the Classes to obtain effective relief from Defendant’s misconduct on an individual basis. A class
3 action provides the benefits of single adjudication, economies of scale, and comprehensive
4 supervision by a single court.

FIRST CLAIM FOR RELIEF
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)

(On Behalf of Plaintiff Buell and the Pre-recorded No Consent Class)

47. Plaintiff repeats and realleges the prior paragraphs of this Complaint and incorporates them by reference herein.

48. Defendant and/or its agents transmitted unwanted solicitation telephone calls to Plaintiff Buell and the other members of the Pre-recorded No Consent Class using a pre-recorded voice message.

49. These pre-recorded voice calls were made *en masse* without the prior express written consent of the Plaintiff Buell and the other members of the Pre-recorded No Consent Class.

50. Defendant has, therefore, violated 47 U.S.C. §§ 227(b)(1)(A)(iii), (b)(1)(B). As a result of Defendant's conduct, Plaintiff Buell and the other members of the Pre-recorded No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

SECOND CLAIM FOR RELIEF
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)

(On Behalf of Plaintiff Buell and the Do Not Registry Class)

51. Plaintiff repeats and realleges the prior paragraphs of this Complaint and incorporates them by reference herein.

52. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber

1 who has registered his or her telephone number on the national do-not-call registry of persons
2 who do not wish to receive telephone solicitations that is maintained by the federal government.”

3 53. Any “person who has received more than one telephone call within any 12-month
4 period by or on behalf of the same entity in violation of the regulations prescribed under this
5 subsection may” may bring a private action based on a violation of said regulations, which were
6 promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone
7 solicitations to which they object. 47 U.S.C. § 227(c).

8 54. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated,
9 telephone solicitations to telephone subscribers such as Plaintiff Buell and the Do Not Call
10 Registry Class members who registered their respective telephone numbers on the National Do
11 Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is
12 maintained by the federal government.

13 55. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff Buell and the Do Not
14 Call Registry Class received more than one telephone call in a 12-month period made by or on
15 behalf of the Defendant in violation of 47 C.F.R. § 64.1200, as described above.

16 56. As a result of Defendant's conduct as alleged herein, Plaintiff Buell and the Do
17 Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are
18 entitled, inter alia, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

19 57. To the extent Defendant's misconduct is determined to be willful and knowing,
20 the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages
21 recoverable by the members of the Do Not Call Registry Class.

PRAYER FOR RELIEF

23 **WHEREFORE**, Plaintiff Buell individually and on behalf of the Classes, prays for the
24 following relief:

1 58. An order certifying this case as a class action on behalf of the Classes as defined
2 above; appointing Plaintiff Buell as the representative of the Classes; and appointing her
3 attorneys as Class Counsel;

4 59. An award of actual and/or statutory damages and costs;

5 60. An aware of attorney's fees;

6 61. An order declaring that Defendant's actions, as set out above, violate the TCPA;

7 62. An injunction requiring Defendant to cease all unsolicited calling activity, and to
8 otherwise protect the interests of the Classes; and

9 63. Such further and other relief as the Court deems just and proper.

10 **JURY DEMAND**

11 Plaintiff requests a jury trial.

12 Respectfully Submitted,

13 **ANGELA BUELL**, individually and on behalf of
14 those similarly situated individuals,

15 DATED this 11th day of February, 2021.

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29 *Attorneys for Plaintiff and the putative Classes*

30 **Pro Hac Vice motion forthcoming*